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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,368	04/18/2001	Naosato Taniguchi	2369.12215	6893
5514	7590	02/23/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				CHANG, AUDREY Y
ART UNIT		PAPER NUMBER		
2872				

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/836,368	TANIGUCHI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Audrey Y. Chang	2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4,13,15,16,18,20,22,24,29,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 6-12,14,26 and 34 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4,13,15,16,18,20,22,24,29,31 and 32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12112003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 11, 2003 has been entered.
2. This Office Action is also in response to applicant's amendment filed on December 11, 2003, which has been entered.
3. By this amendment, the applicant has amended claims 1, 4, 13, 16, 18, 20, 24, 29 and 32 and has canceled claims 2-3, 5, 17, 19, 21, 23, 25, 27, 28, 30, 33 and 35-38.
4. Claims 6-12, 14, 26, and 34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.
5. Claims 1, 4, 13, 15-16, 18, 20, 22, 24, 29, 31 and 32 remain pending in this application.

### *Double Patenting*

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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7. **Claims 1, 4, 13, 15-16, 18, 20, 22, 24, 29 , 31 and 32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, and 7-24 of copending Application No. 09/772,989 in view of the patents issued to Mashitani et al (PN. 5,663,831) and PCT patent publication of Callan (WO 95/05052).**

The instant application and the co-pending application (09/772,989) both disclose a *stereoscopic image display* (the method is implicitly included in the apparatus disclosure since the method is nothing but applying the apparatus) that is comprised of an image display device for displaying *synthesized* images, a second optical system for directing and forming the images from the display device on light transmitting sections and light shielding sections formed within an optical *modulator* or on a *mask* (having opening and shielding regions for passing or shielding the image light), and a first optical system for collecting the image light from the light transmitting sections to an observation surface, (please see Figure 1 of the instant application and Figure 1 of the cited patent). The only difference is that the instant application recites the light transmitting sections and the light shielding sections are formed on a modulator, wherein the modulator as disclosed in the instant application may include electro-optic device. However using electro-optic modulator as a mask to form patterned light transmitting and light shielding sections is quite well known in the art as demonstrated by the teachings of Mashitani et al wherein a parallax barrier (50, Figure 7) having mask pattern of slits (5a) (i.e. light transmitting sections) and barriers (i.e. light shielding sections) for use in a stereoscopic image display system is constructed by using a *liquid crystal element* (known type of electro-optic modulator) (50, Figure 7, column 5, lines 56-67). It would then have been obvious to one skilled in the art to modify the mask of the co-pending application (09/772,989) by forming the mask pattern on an optical modulator such as liquid crystal element for the benefit of providing electronic control to the mask pattern and more easily manipulating and changing the mask pattern as desired.

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**Claims 1 and 29 have been amended further** to include an image forming device for controlling the *order* of the synthesized images displayed on the display device that is switched between opposite order in synchronized with the switching and changing of light transmitting and light shielding sections on the modulator. **Callan** in the same field of endeavor teaches a stereoscopic image display wherein the order of synthesized image displayed on the display device can be switched between two opposite orders and the switching is synchronized with respect to the switching of light transmitting and light shielding sections on the variable shutter components in order to achieve stereoscopic image display. It would then have been obvious to one skilled in the art to apply the teachings of Callan to modify the stereoscopic display of co-pending application (09/772,989) for the benefit of allowing different order of stereo image pair being displayed.

The instant application and the co-pending application (09/772,989) therefore are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection.

*Response to Arguments*

8. Applicant's arguments filed December 11, 2003 have been fully considered but they are not persuasive. The newly amended claims have been fully considered and they are rejected for the reasons stated above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Audrey Y. Chang whose telephone number is 571-272-2309. The examiner can normally be reached on Monday-Friday (8:00-4:30), alternative Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Chang, Ph.D.

*Audrey Y. Chang  
Primary Examiner  
Art Unit 2872*

